

STATE OF MICHIGAN
COURT OF APPEALS

In re MCGEE, Minors.

UNPUBLISHED
October 18, 2016

No. 332648
Berrien Circuit Court
Family Division
LC No. 2014-000126-NA

In re K. MCGEE, Minor.

No. 332649
Berrien Circuit Court
Family Division
LC No. 2015-000144-NA

Before: SHAPIRO, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals as of right the trial court order terminating her parental rights to her four minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* (quoting, *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004)).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

While respondent contends that there was not clear and convincing evidence to terminate her parental rights under any of the above provisions, we disagree. Respondent's three oldest children, K.T, K.A., and K.J., were removed from her care in December 2014 upon allegations in an amended petition that: she had threatened to harm herself due to being overwhelmed by her children; had been involved in a shooting at a motel with her children present in the vehicle; had been referred for mental health services but had not followed up with said services; refused to work with services designed to assist her with her children; moved herself and the children out of appropriate housing and into a hotel with K.J.'s father, (who had an extensive criminal history); and failed to properly care for K.J.'s serious medical conditions. K.J. has serious medical conditions, including clubbed feet and a genetic condition, that require medications and many doctor and therapy appointments, and K.T. has celiac disease. At the combined jurisdictional/termination hearing beginning on February 10, 2016, Melissa Blair, a foster care supervisor, testified that when this matter was first opened in 2014 and respondent became involved with the court, they were concerned about respondent's ability to medically care for her children, to have stable housing, and to care for the children in general. Reunification was the goal at that time and the Department of Human Services provided services to respondent including a psychological evaluation, mental health counseling, parenting classes, medical and dental services for the children, families first services, and transportation services. Respondent began attending classes and visited the children regularly. The children were returned to respondent's care in May 2015 when respondent appeared to be making progress. In June 2015, respondent gave birth to her fourth child, K.

Unfortunately, by the end of November 2015, any minimal progress respondent had made was gone. There were at least three Children's Protective Services (CPS) referrals concerning respondent, albeit unsubstantiated. Respondent failed to attend her parenting classes and was terminated from the parenting program as a result. She attended only a few of her counseling sessions. Respondent failed to show up for a significant number of scheduled medical appointments for K. and K.J., and cancelled and rescheduled other appointments numerous times for the medically fragile K.J. Melissa Blair testified that respondent would go to the service or classes provided for a little while and then state that she did not need the service anymore or felt that it was not relevant. According to Blair, there are no additional or alternative services that they could offer that she felt respondent would engage in. Respondent had no drug or alcohol issues and had no significant mental health issues. She simply made poor decisions when it came to parenting her children.

Claudia Ortiz, an "Early On" teacher who works with developmentally delayed children, testified at the jurisdictional/termination hearing that she was supposed to begin working with K.J. in June 2015 due to his mental and physical delays. K.J. has Edward's Syndrome, a potentially life-threatening condition that affects his entire development. According to Ortiz, respondent was unreachable by phone or not home for services during the months of June through September 2015 such that services did not actually begin until October 2015. Thereafter, she was supposed to have weekly in-home sessions with K.J., but respondent was at home only about 50% of the time when the sessions were supposed to take place.

Most significantly, Ortiz testified that on November 23, 2015, she texted respondent around 10:15 a.m. to arrange to meet her at respondent's home. Respondent responded that she was not at home, but would be there in 30 minutes. Ortiz went to respondent's home and waited in her car. When respondent did not appear by 11:00 a.m., Ortiz left for another appointment. Ortiz returned to respondent's home around 11:50 and respondent's car was still not there. However, after a few minutes, Ortiz saw a child's face in the window, so she approached the home and heard children crying. One of respondent's children opened the door and Ortiz found three of respondent's children, the oldest of whom was three years old, alone. K.J. had fallen off the couch and K., then five months old, was in her car seat, crying. Ortiz texted respondent and asked if she was coming home and respondent responded that she was on her way. She arrived ten minutes later and was upset with the three-year-old for letting Ortiz in the house. Respondent's actions in leaving the children home alone and in failing to keep their medical appointments and otherwise meet their medical needs led to the filing of the supplemental petition seeking termination of respondent's parental rights.

There is clear and convincing evidence that the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the children's age. MCL 712a.19b(3)(c)(i). The conditions that led to adjudication were concerns regarding respondent's ability to care for the children, particularly medically. Throughout these proceedings, respondent had missed numerous doctor appointments for K.J., who has a potentially life-threatening genetic disorder, among other things. Department workers have picked up medications for K.J. when respondent did not or was unable to do so. Respondent also missed numerous doctor appointments for K. beginning from her time of birth.

There was a CPS referral regarding K.T. after she was taken to the hospital and it was noted that she had eczema that was not being treated properly, to the degree that her skin was peeling off. And, K.T. has been recently diagnosed with brain cancer, which will require even more doctor appointments, medications and time. Respondent has not demonstrated that she can or will place the children's medical needs as a priority.

For the same reasons, there was clear and convincing evidence to terminate respondent's parental rights under MCL 712a.19b(3)(g)(failure to provide proper care or custody) and (j)(reasonable likelihood that the child will be harmed if he or she is returned to the home of the parent). All of respondent's children are very young and two of the four have extremely serious medical conditions. Respondent acknowledged to a department worker that K.J. needs 24 hour care, yet she left the children alone (to say nothing of their ages). Respondent has demonstrated that her needs and wants come before the health of her children and that she is overwhelmed by the care of her children.

Prior to the children being removed from her care in December 2014, CPS had been involved in respondent's and their lives numerous times. The first CPS involvement was in December 2012 shortly after the birth of K.A., and when her first child, K.T., was not yet one year old. CPS again became involved in July 2014, shortly after the birth of her third child, K.J., and received several more referrals for the family throughout 2014 due to allegations that respondent was not addressing K.J.'s medical needs, had threatened to harm herself, and improperly supervised the children. After the children were removed, respondent was provided with every service possible and workers went to her home to provide services to make it even easier for her to cooperate. Nevertheless, respondent refused to participate in most services, even turning her head away and closing her eyes at a family team meeting prior to trial. Respondent having neglected to ensure that the children's medical needs were being met or that they were safe and protected, termination was proper.

Although not argued by respondent, termination was also in the best interests of the children. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977(E)(4)." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). To reach a decision as to whether termination is in the child's best interests, the court may consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 42 (internal citations omitted).

There is no dispute that the children are bonded to respondent or that she loves them. Respondent's parenting ability, however, leaves much to be desired. She has been involved with CPS the entirety of most of the children's lives with allegations ranging from her involvement in a shooting while the children were in the car with her to neglect of the children's medical needs and improper supervision. Despite the department having extended and exhausted all of the services at its disposal to respondent, she continues to put the children in precarious situations and fails to attend to their medical needs. As the trial court noted, the children deserve permanence and physical as well as emotional wellbeing. Thus, termination is in the best interest of the children.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto